

# IOWA DEPARTMENT OF NATURAL RESOURCES

## ADMINISTRATIVE CONSENT ORDER

**IN THE MATTER OF:**

**CITY OF COUNCIL BLUFFS**

LUST NO. 9LTP27, UST NO. 201100004

**ADMINISTRATIVE  
CONSENT ORDER**

**2012-UT-04**

**TO:**

**City of Council Bluffs  
Dave McDermott, Superintendent  
901 10th Avenue  
Council Bluffs, IA 50501**

**City of Council Bluffs  
Dick Wade, City Attorney  
209 Pearl Street  
Council Bluffs, IA 50501**

### I. SUMMARY

The Iowa Department of Natural Resources (Department) and the City of Council Bluffs (Council Bluffs) hereby agree to the following Administrative Consent Order (Order). Council Bluffs agrees to develop an instructional document for its operators and pay an administrative penalty of \$1,000 to the Department to address underground storage tank (UST) related violations. See Sections IV and V for more details.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

Tom Collins  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: 515/281-8879

**Relating to legal requirements:**

Aaron Brees, Attorney  
Iowa Department of Natural Resources  
Des Moines, Iowa 50319-0034  
Ph: 515/281-5965  
aaron.brees@dnr.iowa.gov

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 503219-0034

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## II. JURISDICTION

This order is issued pursuant to Iowa Code sections 455B.474(1)(f)(11) and 455B.476, which authorize the Director of the Department to issue any order necessary to secure compliance with Iowa Code chapter 455B, Division IV, Part 8 and Department rules contained in chapter 567 Iowa Administrative Code (I.A.C.) 135. Iowa Code section 455B.109 and administrative rules in chapter 567 I.A.C. 10 authorize the Director to assess administrative penalties up to \$10,000.

## III. STATEMENT OF FACTS

The Department and Council Bluffs hereby agree to the following statement of facts:

1. Council Bluffs is the owner and operator of a facility located at 901 10th Avenue, Council Bluffs, Iowa that contains one 10,000 gallon UST and two 20,000 gallon USTs.
2. The UST system was installed on February 28, 2011 and was registered with the Department on March 4, 2011. Final testing of the product lines prior to the pouring of concrete was done on March 16, 2011. All test results were passing.
3. From March 31 through April 11, 2011, Thiele Geotech, Inc. (Thiele) conducted an inspection of the facility related to obtaining UST insurance from Petroleum Marketers Management Insurance Company (PMMIC). This inspection involved invasive sampling of the site using a hand auger. During this sampling, Thiele struck a product line with the auger. Despite being aware of striking the pipe, Thiele did not report the incident to Council Bluffs or the Department.
4. On April 26, 2011, Council Bluffs received a report from Thiele summarizing the inspection results. Soil and groundwater sample concentrations of petroleum constituents (Benzene, Toluene, Ethylbenzene, and Xylenes) were found above action levels requiring reporting to the Department.
5. On May 3, 2011, the Department issued tank management tags, allowing the UST system to begin operation. David McDermott, Council Bluffs' Superintendent of Fleet Maintenance, stated that the system signaled an audible low line pressure alarm beginning at system activation. Neuman Equipment (Neuman), installer of the system, told Council Bluffs that this was the result of lack of use. At some point, Council Bluffs turned the alarm off.
6. On May 9, 2011, Council Bluffs detected an unexplained loss of 1,211 gallons that caused the line leak tester to run through an entire roll of printer tape over one weekend. Neuman was contacted and again concluded that the low line pressure was due to lack of use, and the printer tape was removed.

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7. On June 14, 2011, Council Bluffs drained the 20,000 UST with the damaged product line and temporarily closed it. On June 17, 2011 Neuman visited the site to investigate the low pressure alarm again. Pressure testing revealed a line pressure loss leading to the discovery of a hole in the line near the dispenser where the hand auger bores were located. Neuman reported the damage to Council Bluffs and a temporary patch was applied to the line.

8. On June 20, 2011, Council Bluffs reported a release to the Department which was estimated at approximately 2,300 gallons.

9. On June 22, 2011, the Department sent Council Bluffs a letter containing a list of questions regarding the above events. A response was received on July 22, 2011. Letters of inquiry were sent to Neuman and Theile on October 6, 2011 and responses were received on October 21 and 25 respectively.

10. On September 28, 2011, the Department received a telephone call from certified groundwater professional Kris LeVier who was working on a Tier 1 report for the site. Ms. LeVier called to ask how to incorporate the contamination found during the investigation described in item 3 above. This was the first time this contamination had been reported to the Department.

10. On November 14, 2011, following a Department investigation of the above events and based on information provided by Council Bluffs, Thiele, and Neuman, Letters of Deficiency were issued to Thiele and Neuman for failing to report a release and unprofessional work practices. Neuman has filed a letter with the Department contesting its Letter of Deficiency.

#### **IV. CONCLUSIONS OF LAW**

The parties hereby agree that the following conclusions of law are applicable to this matter:

1. Iowa Code chapter 455B, Division IV, Part 8 (sections 455B.471-455B.479) establishes the Underground Storage Tank (UST) program. Section 455B.472 declares that the release of regulated substances, including petroleum products, from USTs constitutes a threat to the public health and safety and to the natural resources of the state, and this regulatory program is necessary to adequately address this concern. Iowa Code section 455B.474 authorizes the Environmental Protection Commission (Commission) to adopt rules related to release detection and prevention, financial responsibility, tank closure, site assessment, risk classification, corrective action, and reporting and record keeping requirements applicable to all owners and operators of USTs. The Commission has adopted such rules in 567 I.A.C. chapters 135 and 136.

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2. Iowa Code section 455B.471(6) defines an "owner" of USTs. Council Bluffs was an owner of USTs at the above referenced facility at all times relevant to this Order.
3. Iowa Code section 455B.471(5) defines "operator" of USTs as "...a person in control of, or having responsibility for, the daily operation of the underground storage tank." Council Bluffs is an operator of the above referenced facility and has been at all times relevant to this Order.
4. "Petroleum" is a "regulated substance" as defined in Iowa Code sections 455B.471(7) and (8). "Release" is defined in Iowa Code section 455B.471(9).
5. The Commission has adopted rules related to the reporting of suspected releases of petroleum. Subrule 135.6(1) reads:

*Reporting of suspected releases.* Owners and operators of UST systems must report to the department within 24 hours...and follow the procedures in 135.8(1) for any of the following conditions:

a. The discovery by owners and operators or others of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water);

b. Unusual operating conditions observed by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, or an unexplained presence of water in the tank), unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced; and

c. Monitoring results from a release detection method required under 135.5(2) and 135.5(3) that indicate a release may have occurred unless:

(1) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result; or

(2) In the case of inventory control, a second month of data does not confirm the initial result.

6. In addition, 567 I.A.C. 135.6(3) requires owners and operators to immediately investigate any suspected release of a regulated substance.
7. Council Bluffs violated 567 I.A.C. 135.6 by failing to notify the Department of suspected or actual releases, including but not limited to the following:
  - a) on April 26, 2011, upon receiving the report from Thiele which showed contamination above action levels,
  - b) in early May 2011, due to the constant low pressure alarms,
  - c) on May 9, 2011, due to the apparent loss of 1,211 gallons of fuel, and
  - d) on June 17, 2011, upon confirmation of the damaged product line.

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**V. ORDER**

THEREFORE, the Department hereby orders and Council Bluffs agrees to the following:

1. Council Bluffs shall pay to the order of the Iowa Department of Natural Resources an administrative penalty of \$1,000 within 30 days of receipt of this Order.
2. Council Bluffs shall develop a written protocol with detailed instructions and procedures for operators regarding how to properly respond to alarms and other fuel release indicators. This document shall be provided to the Department within 60 days of receipt of this Order.
3. Council Bluffs Fleet Management shall conduct periodic reviews of the procedures described in item 2 above with its UST operators.

**VI. PENALTY**

1. Iowa Code section 455B.477 authorizes the assessment of civil penalties in Iowa District Court of up to \$5,000 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.
2. Iowa Code sections 455B.476 and 455B.109 authorize the Commission to establish by rule a schedule of civil penalties up to \$10,000 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties. See 567 I.A.C. 10. Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty.

**ECONOMIC BENEFIT:** Council Bluffs did not benefit economically from the delay in reporting the release.

**GRAVITY:** An actual release of product to the environment is a serious event. Given the amount of product released, its toxicity, and its proximity to actual or potential routes of human exposure, any delay in reporting is a serious violation. For this factor, \$750 is assessed.

**CULPABILITY:** Council Bluffs does not appear to have intentionally violated the law. The city received incorrect guidance from two entities that should have known the release reporting requirements. However, every owner and operator of an UST is expected to know the rules that apply to its operation. For this factor, \$250 is assessed.

The total penalty calculation from the above three categories is \$1,000.

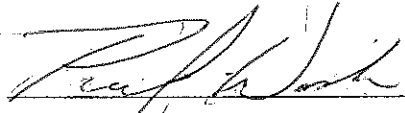
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**VII. WAIVER OF APPEAL RIGHTS**

Iowa Code section 455B.476, and 561 I.A.C. 7.4(1), as adopted by reference by 567 I.A.C. chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Council Bluffs. By signing this Order all rights to appeal this Order are waived.

**VIII. NONCOMPLIANCE**

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.477.

  
Dated this 9<sup>th</sup> day of MAY, 2012

  
ROGER L. LANDE, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 25 day of May, 2012